

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIVA AVIKAIDA ISRAEL,
Plaintiff,
v.
C. McCLELLAND, et al.,
Defendants.

No. 2:22-cv-00729-KJM-EFB (PC)

ORDER AND AMENDED SCHEDULE

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The action proceeds on plaintiff's amended complaint, alleging procedural due process, retaliation, and mail interference claims. ECF Nos. 7, 9. Currently pending before the court are:

Defendants' request further extension of the discovery cut-off deadline to allow them to complete plaintiff's deposition. ECF No. 59 (no response filed).

Plaintiff's motion for extension of the discovery cut-off deadline and for reconsideration of the court's recent amended scheduling order (ECF No. 58). ECF No. 60; ECF No. 65 (response).

Plaintiff's motion for an extension of time to respond to defendants' discovery requests. ECF No. 61; ECF No. 64 (response).

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1 Plaintiff's request for judicial notice. ECF No. 119 (request); ECF No. 121 (defendants'
2 opposition).

3 For the reasons that follow, the court will: (1) modify the schedule to permit plaintiff's
4 deposition; (2) deny plaintiff's requested extensions of time; and (3) deny reconsideration of the
5 court's July 9, 2025 scheduling order (ECF No. 58).

6 Relevant Procedural Background

7 The court's original scheduling order, issued May 5, 2023, was vacated and then amended
8 based on plaintiff's representations that she was unable to meet discovery deadlines due to both 1)
9 lack of access to her legal materials and 2) health concerns. ECF No. 28 at 2; ECF No. 38 at 2.
10 The amended scheduling order extended the deadline for service of discovery requests until
11 March 21, 2025, and set April 18, 2025 as the deadline to finish conducting discovery and to file
12 motions to compel. ECF No. 38 at 3:21. The deadline for dispositive motions was set for June
13 20, 2025, but this deadline was vacated pending resolution of motions to compel filed by both
14 parties. *Id.* at 3:25; ECF No. 57 (granting defendants' ex parte application to vacate and reset
15 dispositive motions deadline, docketed at ECF No. 54).

16 Plaintiff sat for her deposition on March 6, 2025. ECF No. 42-1 at 3 (Boiko declaration).
17 Defendants' counsel suspended the deposition because plaintiff "claimed that she could not
18 testify to several subjects involving the case due to the alleged inability to access her legal
19 property." *Id.* at 3 ll.23-24. Defendants filed a motion asking that plaintiff be compelled "to
20 meaningfully and fully participate" in her deposition and that the discovery deadline be extended
21 for the sole purpose of allowing plaintiff's deposition to be completed. ECF No. 42 at 1.

22 The court granted defendants' request to modify the schedule on July 9, 2025, giving
23 defendants until August 8, 2025 to complete plaintiff's deposition. ECF No. 58. The court
24 ordered plaintiff to respond to defendants' discovery by the same date. *Id.* The court cautioned
25 that further requests to modify the schedule would be "looked upon with disfavor and must be
26 supported by good cause pursuant to Federal Rule of Civil Procedure 16(b)." *Id.* at 13.

27 Defendants attempted to take plaintiff's deposition again on July 29, 2025. However,
28 institution staff informed defense counsel on that date that the deposition could not go forward

1 due to the medical isolation of plaintiff's housing unit. ECF No. 59-1 (Decl. of Brittany Boiko) at
2 1-2 ¶ 2. Because the deadline to complete the deposition would elapse on August 8, 2025,
3 counsel filed a motion to modify the schedule. ECF No. 59. Defendants request 30 days to
4 complete the deposition, an additional two weeks to file any related motion to compel, and 75
5 days to file a dispositive motion. *Id.*

6 Plaintiff seeks an extension of the discovery deadline of 45 days, citing unspecified health
7 issues and the many cases she is currently litigating. ECF No. 60. She also asks the court to
8 reconsider its July 7, 2025 order, but provides no argument justifying reconsideration, nor even
9 any specific aspect of the order she wished to have reconsidered. *Id.* She also seeks an extension
10 of 10 days to respond to defendants' discovery requests, ECF No. 61, but defendants respond that
11 plaintiff has "served several different batches of responses to Defendants' discovery requests,
12 rendering this motion moot." ECF No. 64 at 2.

13 Analysis

14 Federal Rule of Civil Procedure 16(b)(4) provides: "A schedule may be modified only for
15 good cause and with the judge's consent." Courts considering a request to modify a schedule
16 under Rule 16(b)(4) look primarily to the whether the party seeking modification could not
17 reasonably meet the deadline despite the exercise of due diligence. *Johnson v. Mammoth*
18 *Recreations*, 975 F.2d 604, 609 (9th Cir. 1992). While the focus is primarily on the moving
19 party's diligence, "the existence or degree of prejudice to the party opposing the motion might
20 supply additional reasons to deny" the requested modification. *Id.*

21 The inability of counsel to depose plaintiff prior to the expiration of the existing deadline
22 due to the isolation of her housing unit provides good cause for the granting of defendants'
23 motion to modify the schedule. Plaintiff has not provided good cause for the extensions she
24 seeks. Unspecified health issues and the litigation of many cases simultaneously cannot justify
25 further delay of this case, which was filed in April 2022. The case's progress has been hampered
26 by the many extensions of time sought by both parties, including an extended delay when plaintiff
27 represented to the court that serious health issues impacted her ability to litigate. *E.g.*, ECF Nos.
28 14, 28, 37, 57. Plaintiff's health appears adequate to prosecute this case, and her participation

1 must include her deposition.

2 In addition, plaintiff has filed a notice to the court indicating that she has answered
3 defendants' discovery requests, and defendants have acknowledged her response, so her request
4 for an extension of time to do so is now moot. ECF Nos. 63, 64.

5 Plaintiff has provided no justification for the court to revisit its rulings of July 7, 2025
6 (ECF No. 58). Accordingly, her request for reconsideration of that order will be denied.

7 Terminating Sanctions

8 Federal Rule of Civil Procedure 37(b)(2)(A)(v) provides that a court may dismiss an
9 action if the plaintiff fails to obey an order to provide discovery. Dismissal is a harsh sanction
10 that is imposed only upon analysis of a five-factor test, with the key factors being the prejudice
11 that failure to respond has caused to the party seeking sanctions and the availability of lesser
12 sanctions. *Karimi v. Golden Gate School of Law*, 361 F. Supp. 3d 956, 969 (N.D. Cal. 2019)
13 (citing *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 948 (9th Cir. 1993)).

14 The Rules of Civil Procedure require plaintiff to fulfill her discovery obligations and
15 comply with the court's orders including the scheduling order as modified. The court will apply
16 the five-factor test set forth in *Henry* and *Karimi* to consider requests for sanctions, including the
17 sanction of dismissal, should plaintiff decline to participate in her next noticed deposition.

18 **ORDER**

19 Accordingly, it is hereby ORDERED that:

- 20 1. Defendant's motion to compel plaintiff's deposition and to extend the scheduling order
21 for this purpose (ECF No. 59) is GRANTED. The deposition shall proceed according
22 to the amended schedule set forth below.
- 23 2. Plaintiff's motions for a 45-day extension of discovery deadlines and for
24 reconsideration (ECF Nos. 60) is DENIED.
- 25 3. Plaintiff's motion for an extension to respond to defendants' discovery requests (ECF
26 No. 61) is DENIED as moot.
- 27 4. The case shall proceed according to the scheduling order issued on May 5, 2023,
28 amended as follows:

- 1 a. Plaintiff's deposition shall proceed no later than October 15, 2025, and plaintiff
2 shall "meaningfully and fully participate" in the deposition.
- 3 b. Motions to compel related to plaintiff's deposition shall be filed no later than
4 October 29, 2025.
- 5 c. Defendants shall have until October 24, 2025 to respond to plaintiff's motions
6 to compel (ECF Nos. 51, 58, and 62).
- 7 d. Any request for additional modifications of the scheduling order, including
8 specific requests for specific additional discovery, must be made no later than
9 October 15, 2025. Any such motion will be looked upon with disfavor and
10 must be supported by good cause pursuant to Fed. R. Civ. P. 16(b).
- 11 e. Dispositive motions shall be filed on or before December 1, 2025.
- 12 f. Unless otherwise ordered, all motions to dismiss, motions for summary
13 judgment, discovery motions, and motions made under the authority of Fed. R.
14 Civ. P. 7, 11, 12, 15, 41, 55, 56, 59 and 60, and Local Rule ("L.R.") 110 shall
15 be briefed in accordance with L.R. 230(l). Failure to timely file an opposition
16 or statement of no opposition to such a motion may be deemed a waiver of
17 opposition to the motion and may result in the imposition of sanctions. L.R.
18 230(l). Oppositions to all other motions need to be filed only as directed by the
19 court.
- 20 g. The court will schedule pretrial proceedings, if necessary, upon the resolution
21 of any pretrial motions filed. Requests to modify this schedule will be looked
22 upon with disfavor and must be supported by good cause pursuant to Fed. R.
23 Civ. P. 16(b).

24 So ordered.

25 Dated: September 17, 2025



26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE